

LOVELL STEWART HALEBIAN JACOBSON LLP

61 Broadway, Suite 501
New York, New York 10006
www.lshllp.com

Telephone
212.608.1900

Facsimile
212.719.4775

December 9, 2014

Via ECF

The Honorable Loretta A. Preska
Chief Judge, United States District Court
Southern District of New York
500 Pearl Street, Room 2220
New York, New York 10007-1312

Re: *In re Digital Music Antitrust Litigation*, No. 06 MDL 1780 (LAP)

Your Honor:

We write on behalf of Plaintiffs to state our position regarding the current status of class certification briefing and discovery.

Defendants refuse to agree to an amended class certification briefing schedule because they purport to be unable to depose the seven Proposed Class Representatives, who, through correspondence to Defendants from their respective separate lawyers, as well as filings with this Court, have asked to be removed from the action. These individuals are: Andrew Edenbaum, Keaton Landry, Sheri (Clark) Lowery, Lisa Owens, Matthew Putnam, Kevin Starr, and Cato Thornton.¹

Edenbaum, (Clark) Lowery, Owens, Thornton, and Putnam, through their individual lawyers, have advised Defendants they decline to produce their digital music files pending further action from the Court. Starr advised Defendants by Affidavit dated September 25, 2014, that he has no digital music files to produce, and Landry advised Defendants by Declaration dated September 13, 2014, that he has no digital music files to produce.²

Additionally, there are several motions ripe for ruling that are relevant to Class Certification, as follows: (1) Plaintiffs' Letter Motion to remove Edenbaum, Landry, Clark-Lowery, Starr, and Thornton as Proposed Class Representatives (Dkt. No. 225); (2) Letter

¹ Edenbaum, Landry, Clark-Lowery, Starr, and Thornton sought Court permission to withdraw as Proposed Class Representatives on March 13, 2014. Putnam so moved on June 16, 2014, and Owens did likewise on June 12, 2014.

² Starr's Affidavit is attached as Ex. D to Dkt. No. 274. Landry's Declaration is attached as Ex. E to Dkt. No. 274.

The Honorable Loretta A. Preska

December 9, 2014

Page 2 of 2

Motion by Putnam to withdraw as a Proposed Class Representative (Dkt. No. 266); (3) Letter Motion by Owens to reconsider Dkt. 273 requiring her to appear for deposition in the United States (Dkt. No. 278); (4) Plaintiffs' Letter Motion to amend the Consolidated Amended Complaint and dismiss Count III for unjust enrichment (Dkt. No. 291); (5) Plaintiffs' Motion to Reconsider August 11, 2014 Order (Dkt. No. 294); and (6) Plaintiffs' Letter Motion to Amend the Consolidated Amended Complaint and add Class Representatives for the State Classes of New York and California (Dkt. No. 298).

Relatedly, the Court's August 11, 2014 Order (Dkt. No. 290), which Plaintiffs timely moved to reconsider, directed Defendants to confer with Plaintiff's counsel if they "feel the need to depose any of the remaining class representatives" on the issue of "illegal downloading," and to report any disagreement to the Court. Defendants have done neither, despite Plaintiffs' repeated attempts to meet and confer to resolve these issues without Court intervention.

Given Defendants' disruption of the parties' previously agreed class certification schedule memorialized in Dkt. No. 220, Plaintiffs respectfully request rulings on the pending matters enumerated above so that this case may proceed to class certification in accordance with an amended briefing schedule.

Respectfully Submitted,

//s/ Merrick S. Rayle_____
Merrick S. Rayle
LOVELL STEWART HALEBIAN
JACOBSON LLP
61 Broadway, Suite 501
New York, New York 10006
(212) 608-1900

//s/ Craig Essenmacher_____
Craig Essenmacher
LOVELL STEWART HALEBIAN
JACOBSON LLP
61 Broadway, Suite 501
New York, New York 10006
(212) 608-1900

Interim Co-lead counsel for Plaintiffs